Attorney General
Betty D. Montgomery

September 9, 1996

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Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

[redacted]

Re: *In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996,* CC Docket No. 96-150.

Dear Mr. Caton:

Enclosed please find the original and twelve copies of the **Reply Comments of the Public Utilities Commission of Ohio In the Matter of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996** in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General of Ohio

Ann E Henkener

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AEH/kja
Enclosure

cc: Common Carrier Bureau's Accounting and Audits Division
International Transcription Services, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-150
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Accounting Safeguards Under the	)	
Telecommunications Act of 1996	)	

EXECUTIVE SUMMARY OF THE REPLY COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

The PUCO completely concurs with the move toward competition in the telecommunications industry. Steady, unimpeded progress towards this goal requires that the integrity of the process is maintained and that all parties and stakeholders have confidence in the fairness of the results. With new and continually changing conditions, refined accounting safeguards such as those proposed by the FCC are required, but not diluted ones. Failure to provide confidence and assurance to core customers will itself impede progress toward competition. It is not a question of more regulation or less regulation, but one of appropriate regulation, that is critical in managing the transition to a competitive telecommunications industry.

Contrary to the argument that price caps regulation obviates the necessity to have strict controls, the need for accounting controls and audit trails are even more imperative at the present. The various price caps systems are, in fact, experiments which are subject to review at periodic intervals. The validity of these experiments requires appropriate accounting systems and audit trails to make meaningful comparisons. Additionally, an overallocation of joint and common costs to the local exchange operations could result in inflated prices for cost-based interconnection, since rules promulgated by the FCC in CC Docket No. 96-98 establish that an appropriate allocation of joint and common costs is to be recognized in total element long run incremental cost (TELRIC) studies establishing interconnection rates.

The PUCO believes that permitting the State commissions to assist in the audit planning process would result in a more comprehensive work product and would obviate the need for State commissions to conduct parallel audits. State commissions also need the flexibility to implement intrastate accounting rules based on their rate setting regime and regulatory laws.

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REPLY COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

The Public Utilities Commission of Ohio (PUCO) hereby submits its reply comments pursuant to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96-150 (In the Matter of Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996. Specifically, the FCC's NPRM in this proceeding is proposing rules to implement the accounting safeguard provisions of Sections 260 and 271 through 276 of the Telecommunications Act of 1996.) Those sections address Bell Operating Company (BOC) and, in some cases, incumbent local exchange carrier provision of particular telecommunications and information services.

The NPRM addresses the various accounting safeguards that Congress adopted in the 1996 Act to promote the development of competition in telecommunications markets while protecting subscribers of regulated monopoly services provided by the BOCs and, in some cases, other incumbent local exchange carriers against the risk of being forced to "foot the bill" for the carriers' entry into, or continued participation in, competitive services, and to promote competition in new markets by preventing carriers from using their existing market power in local exchange services to obtain an anti-competitive advantage in those new markets the carriers seek to enter.

By way of these reply comments, the PUCO submits its recommendations concerning the necessity for continued application of accounting safeguards, the structure for compliance audits contemplated in the 1996 Act, and the FCC's jurisdiction in intrastate accounting matters.

Necessity of Accounting Safeguards

The PUCO completely concurs with the move toward competition in the telecommunications industry. It should be noted that steady, unimpeded progress towards this goal requires that the integrity of the process is maintained and that all parties and stakeholders have confidence in the fairness of the results. In these circumstances, with new and continually changing conditions, refined accounting safeguards such as those proposed by the FCC are required, but not diluted ones. Failure to provide confidence and assurance to core customers will itself impede progress toward competition. It is not a question of more regulation or less regulation, but one of appropriate regulation, that is critical in managing the transition to a competitive telecommunications industry. As discussed below, the accounting safeguards proposed by the FCC are necessary and appropriate.

The need for accounting controls and audit trails are even more imperative at the present, contrary to Ameritech's argument that price caps regulation obviates the necessity to have strict controls. The various price caps systems are, in fact, experiments which are subject to review at periodic intervals. The validity of these experiments requires appropriate accounting systems and audit trails to make meaningful comparisons. While Ameritech's intrastate rates are subject to a price caps regulation plan in Ohio, at the conclusion of this plan the PUCO will evaluate the efficacy of this type regulation. During the periodic review, financial performance measures, among other additional factors, may be taken into consideration by the PUCO. As a result, Ameritech could be incented to misallocate costs from its affiliate companies to local exchange regulated operations. Appropriate accounting controls are a means to dissuade and detect such activity. In further support of its position on this matter, the PUCO notes that Sprint Corporation indicated in its comments that "Under a pure Price cap regime, LECs would have little incentive to have their regulated services subsidize their non-regulated operations." Sprint also notes that "a pure price cap regime does not exist and cannot realistically be made pure. Thus, a price cap regime does not fully protect against anti-competitive activities." (Sprint comments at pages 16 and 17)

Additionally, as mentioned in our reply comments in CC Docket 96-149, an overallocation of joint and common costs to the local exchange operations could result in inflated prices for cost-based interconnection, since rules promulgated by the FCC in CC Docket No. 96-98 establish that an appropriate allocation of joint and common costs is to be recognized in total element long run incremental cost (TELRIC) studies establishing interconnection rates.

Lastly, the PUCO is keenly aware of the need for an audit trail and auditable records as a result of its participation in the federal/state joint affiliated transaction audit of Ameritech Services, Inc. conducted by the FCC, the Public Service Commission of Wisconsin (PSCW), and the PUCO. One of the audit's findings was that "ASI failed to provide sufficient written documentation to allow the audit team to analyze and substantiate, to the audit team's satisfaction, ASI's rationale for the apportionment of its costs between regulated and non-regulated AOC services."

That audit resulted in a Consent Decree Order in Docket AAD 95-75 whereby Ameritech agreed to maintain necessary records to justify allocating and recording costs to regulated accounts. The PUCO concurs and supports the recommendations by the PSCW (comment at pages 7 and 8) and MCI (comments at page 9) that Part 32 and 64 rules be modified to require carriers to maintain documentation to provide a complete audit trail of cost allocations and affiliate transactions. This documentation will assist and expedite the work of auditors who will perform annual compliance audits required by the 1996 Act.

Audit Requirements

The PUCO concurs with the recommendation of the Public Service Commission of Wisconsin (PSCW) that supports the NARUC resolution adopted July 25, 1996, which outlines the guidelines for the biennial audits required under Section 272 of the 1996 Act. This resolution, which the PUCO, PSCW, and several other State commissions developed in conjunction with the National Association of Regulatory Utility Commissioners (NARUC), would permit State commissions to have input in the scope, objectives and work plan of the audits, and not just receive information. The PUCO believes that permitting the State commissions to assist in the audit planning process would result in a more comprehensive work product and would obviate the need for State commissions to conduct parallel audits.

FCC Jurisdiction/State Pre-emption

The PUCO concurs with those commenters' objecting to the FCC pre-empting State commission jurisdiction in intrastate regulatory accounting matters. In particular, the PUCO agrees with those commenters, such as the PSCW, who have demonstrated that the FCC's tentative conclusion that it has jurisdiction over intrastate activities and therefore possesses the ability to prescribe intrastate cost allocation procedures and affiliated transaction rules is in error. Section 152(b) of Chapter 47 of the United States Code has not been repealed or modified in any way. Therefore, it was the clear intent of Congress to continue to reserve authority over intrastate matters to the states. Further, in Section 601(c)(1) of the 1996 Act, Congress expressly stated that "this Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State or local law unless expressly so provided in such Act or amendments." These sections of the 1996 Act must be given meaning, and authority must be reserved to the States.

While the PUCO and many other State commissions subscribe to FCC accounting policies, practices, and procedures, there are situations where federal accounting practices could be inconsistent with State rules and rate setting policies. State commissions need the flexibility to implement intrastate accounting rules based on their rate setting regime and regulatory laws. The PUCO notes that it regulates over forty LECs. One company (Ameritech) has its intrastate rates established under a price cap regime. Two other LECs have rates established under alternative regulation rules promulgated by the PUCO, and the remaining companies' rates were established under traditional rate-of-return regulation. Different rate setting regimes may warrant different accounting prescriptions.

The Public Utilities Commission of Ohio also agrees with the comments of NARUC that the FCC should continue to work cooperatively with the States and to incorporate the recommendations of both NARUC and individual states in implementing the 1996 Act, and in particular in developing rules concerning accounting safeguards.

CONCLUSION

The PUCO take this opportunity to thank the FCC for the opportunity to file reply comments in this proceeding.

Respectfully submitted,

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